

**Miami-Dade County Department of Regulatory and Economic Resources  
Staff Report to Community Council No. 12**

**PH: Z13-003 (13-11-CZ12-1)**

**January 7, 2014**

**Item No. A**

| <b>Recommendation Summary</b>              |   |
|--|---|
| <b>Commission District</b>                 | 10  |
| <b>Applicant</b>                           | MG Jewelers of Miami, Inc.  |
| <b>Summary of Requests</b>                 | The applicant is seeking a Use Variance to allow a pawnbroker use for secondhand jewelry only in a more restrictive zoning district, to modify a previously approved resolution and to permit fewer street trees than required.                               |
| <b>Location</b>                            | 11760 SW 88 Street, Miami-Dade County, Florida.   |
| <b>Property Size</b>                       | 2.5 acres   |
| <b>Existing Zoning</b>                     | BU-1A   |
| <b>Existing Land Use</b>                   | Retail  |
| <b>2015-2025 CDMP Land Use Designation</b> | Business and Office (see attached Zoning Recommendation Addendum)   |
| <b>Comprehensive Plan Consistency</b>      | Consistent with interpretative text, goals, objectives and policies of the CDMP   |
| <b>Applicable Zoning Code Section(s)</b>   | Section 33-311(A)(4)(a), <b>Use Variance</b> standards, Section 33-311(A)(7) <b>Generalized Modification Standards</b> and Section 33-311(A)(4)(b) <b>Non-Use Variances From Other Than Airport Regulations</b> (see attached Zoning Recommendation Addendum) |
| <b>Recommendation</b>                      | <b>Denial without prejudice.</b>  |

This item was deferred from the December 17, 2013 meeting of Community Zoning Appeals Board (CZAB) #12, to allow for the advertisement of two new requests.

**REQUESTS:**

- (1) USE-VARIANCE to permit a pawn broker use in the BU-1A zone, as would be permitted in the BU-3 zone, only upon approval after public hearing.
- (2) MODIFICATION of Condition #2 of Resolution CZAB12-4-11, passed and adopted by the Community Zoning Appeals Board, reading as follows:

FROM: "2. That the applicant provide the required amount of street trees along SW 88 Street (North Kendall Drive) and SW 89 Street rights-of-way at the time of permitting."

TO: "2. That the applicant provide 15 palm street trees along SW 88 street (North Kendall Drive) right-of-way at the time of permitting, and to allow (0) street trees along SW 89 Street."

The purpose of the above request is to allow the applicant to reduce the number of street trees required along SW 88 Street (North Kendall Drive) and to provide (0) street trees along SW 89 street.

- (3) NON-USE VARIANCE to permit 15 palm street trees (21 palm street trees required) along the SW 88 Street (North Kendall Drive) right-of-way, and to permit (0) street trees (15 street trees required) along SW 89 Street right-of-way.

Plans are on file and may be examined in the Department of Regulatory and Economic Resources entitled "Existing Jewelry Shop Floor Plan" as prepared by Roger Perez consisting of 1 sheet, a plan entitled "MG Jewelers of Miami Proposed Pawn Shop" preparer unknown and consisting of 1 sheet, both dated stamped received 2/14/13. Plans may be modified at public hearing.

#### **PROJECT DESCRIPTION AND PROJECT HISTORY:**

The site has been the subject of several zoning actions from 1981 to 2011. In 2011, the applicant was granted approval to modify a condition of a previously approved resolution in order to submit revised plans showing an existing storage room addition and cooler/freezer addition to an existing commercial building, as well as a detached storage shed which encroach into the rear (south) setback area. Moreover, the applicant sought to permit a reduced parking back out distance, fewer street trees, and a narrower greenbelt than that required by the Zoning Code. Subsequently, the applicant withdrew the request to permit less street trees and as condition of said resolution the applicant was required to provide the required street trees at the time of permitting.

The current application seeks a pawn broker use in the BU-1A zone, as would be permitted in the BU-3 zone, only upon approval after public hearing, for the pawning of jewelry only. Additionally, the applicant seeks to modify a condition of a prior resolution in order to provide fewer street trees than required along the rights-of-way. The site plan submitted by the applicant depicts an existing 1,428 sq. ft. jewelry store within a 32,413 sq. ft. shopping center.

| <b><u>NEIGHBORHOOD CHARACTERISTICS</u></b> |  |                             |
|--|--|-----------------------------|
|  | <b>Zoning and Existing Use</b>                                 | <b>Land Use Designation</b> |
| <b>Subject Property</b>                    | BU-1A; shopping center   | Business and Office         |
| <b>North</b>                               | BU-2; shopping center  | Business and Office         |
| <b>South</b>                               | RU-5A; office buildings  | Business and Office         |
| <b>East</b>                                | BU-1A; bank  | Business and Office         |
| <b>West</b>                                | SR-821/HEFT; Homestead<br>Extension of the Florida<br>Turnpike | Transportation              |

#### **NEIGHBORHOOD COMPATIBILITY:**

The subject property is a corner lot, located at 11760 SW 88 Street. The area surrounding the subject property is primarily characterized by commercial uses.

#### **SUMMARY OF THE IMPACTS:**

The approval of this application will provide an additional commercial service for the surrounding community. However, approval of the request to allow a pawnbroker use which is typically located in a zoning district that allows more intensive commercial uses only upon approval after public hearing, could have a negative impact on the surrounding area. Furthermore, approval of the same could result in an increase in the intensity and types of uses that would be allowed in



this area. In addition, the approval of the site without the required amount of street trees can have a negative visual impact on the area.

#### **COMPREHENSIVE DEVELOPMENT MASTER PLAN ANALYSIS:**

The Comprehensive Development Master Plan (CDMP) Land Use Plan (LUP) map designates the subject property for **Business and Office** use. *This category accommodates the full range of sales and service activities. Included are retail, wholesale, personal and professional services, call centers, commercial and professional offices, hotels, motels, hospitals, medical buildings, nursing homes (also allowed in the institutional category), entertainment and cultural facilities, amusements and commercial recreation establishments such as private commercial marinas.* As such, the existing jewelry store use and requested pawnbroker use are **consistent** with the uses described in the CDMP Land Use Element interpretative text for the Business and Office designation.

The CDMP Land Use Element **Objective LU-4** states that *Miami-Dade County shall, by the year 2015, reduce the number of land uses, which are inconsistent with the uses designated on the LUP map and interpretive text, or with the character of the surrounding community.* The **Land Use Element Policy LU-4A** of said interpretive text provides that *when evaluating compatibility among proximate land uses, the County shall consider such factors as noise, lighting, shadows, glare, vibration, odor, runoff, access, traffic, parking, height, bulk, scale of architectural elements, landscaping, hours of operation, buffering, and safety, as applicable.* Staff notes that the existing jewelry store is located within a shopping center that consists of various commercial uses such as a cash advance store, optical store, pet emergency care, hair salon, bank, and restaurants, among other uses. In staff's opinion, the requested pawnbroker use for jewelry only is an accessory use to the existing jewelry store and therefore, would be **consistent** with the Business and Office designation on the CDMP Land Use Plan map and **consistent** with **Objective LU-4** based on the criteria outlined in **Land Use Element Policy LU-4A**.

#### **ZONING ANALYSIS:**

In February 2011, pursuant to resolution #CZAB12-4-11, the subject property was granted approval to modify a condition of a previously approved Resolution in order to submit revised plans showing an existing storage room addition and cooler/freezer addition to an existing commercial building, as well as a detached storage shed which encroach into the rear (south) setback area. Moreover, the applicant sought to permit a reduced parking back out distance, fewer street trees, and a narrower greenbelt than that required by the Zoning Code. Subsequently, the applicant withdrew the request to permit less street trees and as condition of said resolution the applicant was required to provide the required street trees at the time of permitting.

The current application seeks approval of a use variance, under Section 33-311(A)(4)(a) to permit a pawnbroker use in the BU-1A zoning district as would be permitted in the BU-3 district (request #1) only upon approval after public hearing. The letter of intent submitted by the applicant indicates that the applicant intends to limit the pawn use solely for jewelry and will not permit the pawning of other merchandise. Additionally, the applicant is requesting to modify a condition of a previously approved resolution in order to reduce the number of street trees required (request #2) and is seeking to permit fewer street trees along SW 89 Street than are required (request #3).



The existing jewelry store is located within a shopping center that is within the BU-1A zoning district, surrounded by commercially zoned properties and provides the surrounding area with access to neighborhood services for the nearby residents. However, the proposed pawnbroker use is only permitted in the BU-3 zoning district and only upon approval after public hearing. Staff notes that the applicant is requesting this use variance in order to establish a pawnbroker, which is not permitted in the existing BU-1A zoning district. Although the BU-3 district provides for a host of uses that are significantly more intense than those allowed in the BU-1A district, such as gun shops; secondhand stores for the disposal of furniture, fixtures and tools; locksmith shops, sharpening and grinding shops; garage and mechanical services; commercial chicken hatcheries; and pawnbrokers; the applicant has indicated that the pawn broker use would be limited to the pawning of secondhand jewelry only in conjunction with the existing jewelry store.

When request #1, Use Variance to permit a pawnbroker use in the BU-1A zone, as would be permitted in the BU-3 zone only upon approval after public hearing, is analyzed under the Use Variance Section 33-311(A)(4)(a), staff opines that the request is not consistent with the general purpose and intent of the zoning regulations. Section 33-311(A)(4)(a) provides that a **use variance** permits a use of land other than that which is prescribed by the zoning regulations. The standard stipulates that *the Board shall hear and grant applications for use variances from the terms of the zoning regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; and further provided that the use variance will be in harmony with the general purpose and intent of the regulations.* To prove an unnecessary hardship the applicant must demonstrate that without the requested use variance, the applicant, under the existing zoning, has lost all reasonable use of the property.

Based on the information provided by the applicant, staff opines that the applicant has not demonstrated any special conditions related to the subject site where the literal enforcement of applicable zoning district provisions would result in an unnecessary hardship. As previously discussed, the subject property is currently in use and operating as a jewelry store; as such, the current use provides the applicant with economic use and benefit. Furthermore, Section 33-247 provides over forty-five (45) uses permitted in the BU-1A zoning district, which allow for the reasonable use and benefit of the subject property. Staff is of the opinion that the approval of the use variance request will not be in harmony with the general purpose and intent of the regulation, and that the applicant has not demonstrated a loss of all reasonable use of the property under the existing zoning. **As such, staff recommends denial without prejudice of request #1 for the proposed pawnbroker use under the Use Variance Section 33-311(A)(4)(a).**

Staff notes that in 2011, the applicant withdrew the request (request #6 of Resolution No. CZAB12-4-11) to permit fewer trees than required for the subject property and said application was approved with a condition (condition #2 of Resolution No. CZAB12-4-11), requiring the applicant to provide the required trees. Staff also notes that the applicant is currently under enforcement action due to failure to comply with said condition and is currently attempting to plant said trees.

When request #2, which is a modification of condition #2 of Resolution CZAB12-4-11, requiring the applicant to provide the required street trees, is analyzed under Section 33-311(A)(7) Generalized Modification Standards, staff opines that the approval of said request would be **incompatible** with the surrounding area and would be inconsistent with the general purpose and intent of the zoning regulations for the reasons stated below. On the other hand, based on the memoranda from the Platting and Traffic Review Section of the Department of Regulatory and



Economic Resources (RER), the Division of Environmental Resource Management (RER) and the Miami-Dade Fire Rescue Department, staff also opines that the proposed modification will not generate excessive noise or traffic, tend to create a fire or other equally or greater dangerous hazard, provoke excessive overcrowding of people, tend to provoke a nuisance and would not be contrary to the public interest.

However, the BU-1A zoning district regulations requires the applicant to among other things provide *buffering elements in the form of architectural design and landscape design that provide a logical transition to adjoining existing or permitted uses*. As previously noted, the applicant indicated an intent to provide the required street trees by withdrawing the request in the previous public hearing (Resolution #CZAB12-4-11). The applicant has not satisfied this requirement and, combined with the request for an intensification of the uses (request #1), staff opines that approval of this request would be incompatible with the area concerned when considering the necessity and reasonableness of the requested modification.

The applicant has indicated in the submitted revised letter of intent that there are existing utility easements that prevent the planting of street trees along SW 89 Street. Staff has asked the applicant to provide documentation from the utility company indicating that no trees could be planted within those areas. As of the time of this writing, staff has not received any documentation from the utility company addressing same. Staff opines that without proper documentation to the contrary, the applicant has sufficient room to provide the required trees along SW 89 Street. Additionally, staff opines that apart from acting as a visual buffer for the less intensive office uses to the south, the additional landscaping would provide the logical transition referred to in the zoning district regulations. **Therefore, staff recommends denial without prejudice of request #2 under Section 33-311(A)(7) Generalized Modification Standards.**

When request #3 is analyzed under Section 33-311(A)(4)(b), Non-Use Variances From Other Than Airport Regulations, staff opines that approval of this request would not maintain the basic intent and purpose of zoning regulations as it pertains to the stability and appearance of the community. Approval of request #3 would allow the applicant to have fewer street trees than required by the zoning regulations, which in staff's opinion would be **incompatible** with the surrounding area. For the reasons stated above, staff opines that approval of this request will be too intense and out of character with the area. Additionally, this request is germane to request #2 and, in staff's opinion, should be denied without prejudice. **Therefore, staff recommends that the request #3 should be denied without prejudice under Section 33-311(A)(4)(b), Non-Use Variances From Other Than Airport Regulations.**

**CIRCULATION AND PARKING:**

The subject property has ingress and egress points along SW 88 Street.

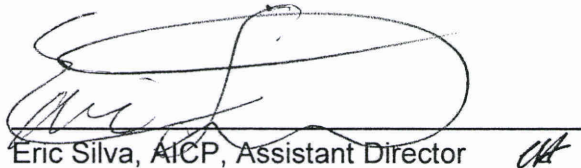
**ENVIRONMENTAL REVIEW:** Not applicable.

**OTHER:** Not applicable.

**RECOMMENDATION:** Denial without prejudice.

**CONDITIONS FOR APPROVAL: None.**

ES:MW:NN:CH:JC:JV

A handwritten signature in black ink, appearing to read "Eric Silva", is written over a horizontal line. To the right of the signature, there is a small, stylized mark that looks like "OK".

Eric Silva, AICP, Assistant Director  
Development Services Division  
Miami-Dade County  
Department of Regulatory and Economic Resources



## ZONING RECOMMENDATION ADDENDUM

MG Jewelers of Miami, Inc.  
Z13-003

| NEIGHBORHOOD SERVICES PROVIDER COMMENTS*                      |              |
|---|--------------|
| Regulatory and Economic Resources<br>(Environmental Division) | No objection |
| Platting and Traffic Review Section (RER)                     | No objection |
| Parks, Recreation and Open Spaces                             | No objection |
| Fire Rescue   | No objection |
| Police  | No objection |
| Schools   | No objection |
| *Subject to conditions in their memorandum.                   |              |

### COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP) OBJECTIVES, POLICIES AND INTERPRETATIVE TEXT

|   |   |
|---|---|
| <b>Business and Office</b><br>(Pg. I-41)  | <i>This category accommodates the full range of sales and service activities. Included are retail, wholesale, personal and professional services, call centers, commercial and professional offices, hotels, motels, hospitals, medical buildings, nursing homes (also allowed in the institutional category), entertainment and cultural facilities, amusements and commercial recreation establishments such as private commercial marinas.</i> |
| <b>Land Use Objective 4</b><br>(Pg. I-11) | <i>Miami-Dade County shall, by the year 2015, reduce the number of land uses, which are inconsistent with the uses designated on the LUP map and interpretive text, or with the character of the surrounding community.</i>   |
| <b>Policy LU-4A</b><br>(Page I-11)        | <i>When evaluating compatibility among proximate land uses, the County shall consider such factors as noise, lighting, shadows, glare, vibration, odor, runoff, access, traffic, parking, height, bulk, scale of architectural elements, landscaping, hours of operation, buffering, and safety, as applicable.</i>   |

### PERTINENT ZONING REQUIREMENTS/STANDARDS

|   |   |
|---|---|
| <b>Section 33-311(A)(4)(a) Use Variances From Other Than Airport Regulations.</b> | <i>The Board shall hear and grant applications for <b>use variances</b> from the terms of the zoning regulations as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in <b>unnecessary hardship</b>, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum use variance that will permit the reasonable use of the premises. A "use variance" is a variance which permits a use of land other than which is prescribed by the zoning regulations and shall include a change in permitted density.</i>  |
| <b>Section 33-311(A)(7) Generalized Modification Standards</b>                    | <i>The Board shall hear applications to <b>modify</b> or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution; and to modify or eliminate any provisions of restrictive covenants, or parts thereof, accepted at public hearing, except as otherwise provided in Section 33-314(C)(3); provided, that the appropriate Board finds after public hearing that the modification or elimination, in the opinion of the Community Zoning Appeals Board, would not generate excessive noise or traffic, tend to create a fire or other equally or greater dangerous hazard, or provoke excessive overcrowding of people, or would not tend to provoke a nuisance, or would not be incompatible with the area concerned, when considering the necessity and reasonableness of the modification or elimination in relation to the present and future development of the area concerned.</i> |

## ZONING RECOMMENDATION ADDENDUM

*MG Jewelers of Miami, Inc.  
Z13-003*

|  |   |
|--|---|
| <b>33-311(A)(4)(b)<br/>Non-Use<br/>Variances From<br/>Other Than<br/>Airport<br/>Regulations</b> | <i>Upon appeal or direct application in specific cases, the Board shall hear and grant applications for non-use variances from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.</i> |
|--|---|